

FORM FOR USE IN APPLICATIONS  
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254

RECEIVED

2006 JAN 26 A 10:49

Debbie Laman Johnson  
Name

159385  
Prison Number

William R. Dwyer Correctional Facility  
100 Annie Lane Bessemer, Alabama 35023-1299  
Place of Confinement

United States District Court Middle District of Alabama

Case No. 3:06cv71-WHA  
(To be supplied by Clerk of U. S. District Court)

Debbie Laman Johnson, PETITIONER  
(Full Name) (Include name under which you were convicted)

Kenny Jones, Warden, RESPONDENT  
(Name of Warden, Superintendent, Jailor, or authorized person  
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF Alabama  
\_\_\_\_\_, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN  
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies \* must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711  
Montgomery, Alabama 36101

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- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

**\*If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

#### PETITION

1. Name and location of court which entered the judgment of conviction under attack Lee County Circuit Court
2. Date of judgment of conviction December 22, 2004
3. Length of sentence \_\_\_\_\_ Sentencing Judge \_\_\_\_\_

4. Nature of offense or offenses for which you were convicted:

Attainder Murder in Violation of Title BA-6-2  
Code of Alabama (1975) and Title BA-4-2 Code of Alabama  
(1975)

5. What was your plea? (check one)

- (a) Not guilty ( )  
 (b) Guilty ( )  
 (c) Nolo contendere ( )

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: \_\_\_\_\_

6. Kind of trial: (Check one)

- (a) Jury ( )  
 (b) Judge only ( )

7. Did you testify at the trial? Yes ( ) No ( )

8. Did you appeal from the judgment of conviction? Yes ( ) No ( )

9. If you did appeal, answer the following:

- (a) Name of court \_\_\_\_\_  
 (b) Result \_\_\_\_\_  
 (c) Date of result \_\_\_\_\_

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ( ) No ( )

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court Lee County Circuit Court  
 (2) Nature of proceeding Rule 32 Pet. for

- (3) Grounds raised The Court has no duty or obligation to  
rehear the subject or to impose the sentence

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No (✓)

(5) Result Dismissed

(6) Date of result December 22, 2004

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_  
\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( ☒ )

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_  
\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( ☒ )

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes ( ☒ ) No ( )

(2) Second petition, etc. Yes ( ) No ( )

(3) Third petition, etc. Yes ( ) No ( )

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: See Attached Petition and Grounds of Petition

Supporting FACTS (tell your story briefly without citing cases or law):

See Attached Petition and Grounds of Petition

B. Ground two: N/A

Supporting FACTS (tell your story briefly without citing cases or law):

N/A

C. Ground three: N/A

Supporting FACTS (tell your story briefly without citing cases or law):

N/A

D. Ground four: \_\_\_\_\_

Supporting FACTS (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes ( ) No (☒)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing \_\_\_\_\_

(b) At arraignment and plea \_\_\_\_\_

(c) At trial \_\_\_\_\_

(d) At sentencing \_\_\_\_\_

(e) On appeal \_\_\_\_\_



(f) In any post-conviction proceeding \_\_\_\_\_

(g) On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ( ) No (✓)

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ( ) No (✓)

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) And give date and length of sentence to be served in the future: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ( ) No (✓)

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_  
(date)

X Jackie Johnson  
Signature of Petitioner



The THE United States District Court  
For THE Middle District of Alabama

JACKIE LAMAR JOHNSON  
Petitioner

vs.

Civil Action No.

Kenny Davis, Warden  
Attorney General of  
THE STATE of Alabama  
Respondent

Petitioner's Grounds of Petition

Comes now the above styled Petitioner  
"Jackie Lamar Johnson", and files this his  
"Petition For writ of Habeas Corpus", Pursuant to  
"Title 28 USC 2254", and in support of same  
this Petitioner will show unto this Honorable Court  
the following to wit:

1. Reincarceration

This Honorable Court Filed a  
"Petition For writ of Relief From Conviction de Sentent"  
Pursuant to Rule 32 A.R.Crim.2, in the Circuit  
Court of Lee County Alabama on October 13, 2004

On November 2, 2004, the STATE of  
Alabama through its Assistant District Attorney  
The Honorable Robert T. Keese, III, Filed its  
Motion For Summary Dismissal of the Petitioner's  
Rule 32 Petition

And on December 22, 2004, The Third Circuit The Honorable Robert M. Harper Lee Circuit Court Judge Entered a order Denying The Petitioner's Rule 32 Petition.

Then on January 4, 2005, The Petitioner Filed Timely Written Notice of Appeal To The Alabama Court of Criminal Appeals.

And on April 23, 2005, The Alabama Court of Criminal Appeals Affirmed by Memorandum The Third Circuit Summary Judgment of The Petitioner's Rule 32 Petition.

Then on May 4, 2005, The Petitioner Filed Timely Application for Rehearing To The Alabama Court of Criminal Appeals.

And on May 13, 2005, The Alabama Court of Criminal Appeals Overruled The Petitioner's Application for Rehearing.

Then on May 19, 2005, The Petitioner Filed Timely Petition for writ of Certiorari To The Alabama Supreme Court.

And on November 10, 2005, The Alabama Supreme Court Denied The Petitioner's Petition for Writ of Certiorari.

Then on this same date November 10, 2005, The Alabama Court of Criminal Appeals issued its Certificate of Disregard in this case.

## 2. Federal Habeas Corpus Issue Presented For Relief

(A) ~~The Court lacks W.D. Jurisdiction To~~  
~~Render The Judgment or To impose The~~  
 ~~sentence~~

## 3. Argument

Case Number CE 90-289

Attempted Murder in Violation of "Title B4-6-2"  
Code of Alabama (1975) "B4-4-2"  
Code of Alabama (1975)"

The Petitioner "Markie Lamar Johnson"  
argues that, his Evidence by the indictment  
Exhibit A, The Petitioner was charged with  
"Attempted Murder", in Violation of "Title B4-6-2"  
Code of Alabama (1975), and "Title B4-4-2"  
Code of Alabama (1975)".

The Petitioner argues that in State  
338 So. 2d 3 (Ala. crim. app. 1976), that State  
quoting Beard v. State, 23 Ala. app. 290,  
124 So. 2d 398 (1929), held the following.

"It is not within the province of any Trial  
Court to modify, change, or alter the  
Sentence of the State of Alabama, and no  
Trial Judge is vested with the power of  
direction to this end."

The Petitioner argues further that  
 Additionally a Court Act of "Sister Murder  
 Jurisdiction" is fundamental, cannot be  
 altered and may be raised at any time,  
 McKinney v. STATE, 549 So. 2d 168,  
 444 So. 2d 198 (1989).

The Petitioner argues that although he  
 was indicted for Attempted Murder, the  
 Attorney General's Office for this offense  
 states the following.

"Title 34-6-2" Code of Alabama (1975):

Murder

(a) a person commits the crime of Murder if

(1) with intent to cause the death of  
 another person

"Title 34-4-2" Code of Alabama (1975):

Attempt

(a) a person is guilty of an attempted crime  
 if, with intent to commit a  
 specific crime, he does any act which  
 constitutes a substantial step toward  
 the commission of such offense



The Petitioner argues that his  
 Arrestment Exhibit A, states the following

"DID WITH THE INTENT TO COMMIT THE CRIME  
 OF MURDER, SECTION 13462 OF THE CALIFORNIA  
 CRIMINAL CODE, ATTEMPT TO COMMIT SAID CRIME  
 BY ATTEMPTING TO INTENTIONALLY CAUSE THE DEATH  
 OF ANOTHER PERSON."

The Petitioner argues that although  
 intent to commit a crime is a  
 necessary element within any "ATTEMPT"  
 statute, it is not, in and of itself, a  
 crime to possess intent.

The Petitioner argues that, clearly,  
 this Arrestment Exhibit A, has been  
 invalid, as it does not refer to the  
 criminal statute "THE CALIFORNIA CODE  
 OF CRIMINAL LAWS."

Charlotte Meneses Esq. Petitioner  
 Mrs. Dina Hernandez sent to let set her  
 contested matter down for a formal  
 hearing on the merits of the  
 Petitioner's claim raised in the present Petition  
 for writ of Habeas Corpus.

*See this the 12th day of December  
2005*

*Respectfully Submitted*

*Jackie Johnson*

*Officer Lamon Johnson*

*HP# 159385*

*William F. Johnson, Captain (Retired)*

*100 W. Main Ave*

*Bessemer, Alabama 35023-7094*

*6*